THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.957 of 2007

Dated:05.02.2007

Between:

Syed Ahamed and others.

...Petitioners

and

The District Collector and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.957 of 2007

ORDER:

The petitioners herein seek a writ of mandamus declaring the order of the first respondent in Case No.D5/568/2006, dated 10.10.2006, as illegal and contrary to the provisions of Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'). By impugned order, the first respondent while setting aside the order of the second respondent dated 27.08.2005 gave liberty to the petitioners herein to prefer an appeal before the Revenue Divisional Officer, if so advised.

The brief fact of the matter is as follows. The petitioners are allegedly owners of agricultural land admeasuring Acs.3.11 guntas in Survey Nos.181 and 182 situated at Kagazghat Village of Manchal Mandal in Ranga Reddy District. The property was purchased by the father of the first petitioner and grandfather of petitioners 2 and 3 from one Krishna Reddy of Gummadavalli Village in 1939. After the death of the original purchaser, his sons succeeded to the property and their names were registered in the record of rights as pattadars. The fourth respondent approached the third respondent under Section 5-A of the Act for validation of unregistered documents under which

he claimed the property to have been transferred to him. By proceedings dated 12.06.1990, the third respondent incorporated the name of the fourth respondent in the revenue records. The petitioners then filed an appeal before the second respondent, who by order dated 27.08.2005 set aside the order of the third respondent and remitted the matter for *de novo* enquiry. The same was brought before the first respondent by the fourth respondent by way of a revision under Section 9 of the Act, who held that the order of the second respondent is unsustainable.

Learned Counsel for the petitioners submits that the Mandal Revenue Officer issued necessary proceedings incorporating the name of the fourth respondent without notice to the petitioners, and therefore, the Revenue Divisional Officer was justified in remitting the matter to the Mandal Revenue Officer for *de novo* enquiry. According to the learned Counsel, the validation of the alleged sale set up by the fourth respondent by the Mandal Revenue Officer was made without conducing any enquiry, and by remitting the matter for *de novo* enquiry, no prejudice would be caused, especially when the case of the fourth respondent is disputed by the petitioners. **Per contra**, the learned Assistant Government Pleader for Revenue (General-T) brought to the notice of this Court the two Division Bench judgments of this Court in **M.B.Ratnam v. Revenue Divisional Officer, Ranga Reddy District** [1] and **Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society** [2] and contends that as the Mandal Revenue Officer passed orders under Section 5-A of the Act on 12.06.1990 an appeal would not lie to the Revenue Divisional Officer, and therefore, the Joint Collector was justified in setting aside the order of the Revenue Divisional Officer. He also submits that if the petitioners are aggrieved by the orders of the Mandal Revenue Officer the remedy was only to file the revision petition under Section 9 of the Act as held by the Division Bench of this Court in **Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society** (supra).

There is no denial that the fourth respondent filed an application before the Mandal Revenue Officer under Section 5-A of the Act seeking validation of an unregistered transaction claiming the said property. The order was passed on 12.06.1990 in favour of the fourth respondent. In **M.B.Ratnam v. Revenue Divisional Officer, Ranga Reddy District** (supra) the Division Bench, *inter alia,* considered the question whether an appeal under Section 5-B of the Act against the order of the Mandal Revenue Officer under Section 5-A of the Act passed before 31.10.1993 (the date on which Section 5-B of the Act was incorporated by an amendment to the Act) would lie. The Division Bench laid down thus.

> We have already noticed that Amending Act of 1994 was given effect from 31st October, 1993. The Act did not provide any right of appeal or revision against the orders passed by the Mandal Revenue Officer under Section 5-A of the R.O.R.Act prior to Section 5-B coming into operation. In the instant case, the orders under Section 5-A of the R.O.R.Act are dated 6-2-1990 and the proceeding resulting in grant of certificate under Section 5-A of the R.O.R.Act itself was initiated prior to 6-2-1990. Thus, it is clear that neither on the date when the proceedings were instituted under Section 5-A of the R.O.R.Act nor as on the date when the orders were passed by the Mandal Revenue Officer, there has been any right of appeal provided under the Act.

In view of the binding decision of the Division Bench, the appeal entertained by the Revenue Divisional Officer, which was, in effect, decided in favour of the petitioners was without jurisdiction. Therefore, though not for that reason, the first respondent was justified in setting aside the order of the Revenue Divisional officer. Secondly, the Division Bench in **Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society** (supra) held that even though Section 9 of the Act did not specifically provide for a revision against the order under Section 5-A of the Act passed prior to 31.10.1993, Section 9 of the Act, as it stands, is exhaustive and inclusive of any proceedings taken under Section 5-A of the Act. Therefore, the remedy, if any, of the petitioners is to file a revision petition before the Joint Collector. In the event of the

petitioners approaching the Joint Collector it shall always be open to the fourth respondent to raise the question of limitation, and also open to the Joint Collector to consider such question whether or not such ground is raised. Insofar as this Writ Petition is concerned, this Court does not find any infirmity in the order passed by the Joint Collector.

The Writ Petition with the above observations is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

05.02.2007
vs

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[1] 2003(1) ALD 826 (DB) = 2003(1) ALT 688 (DB)
[2] 2003(5) ALD 654 (DB)